

# Western Cape

## EE ROADSHOW 2020

19/ 10/2020



**employment & labour**

Department:  
Employment and Labour  
REPUBLIC OF SOUTH AFRICA



# Workshop Agenda

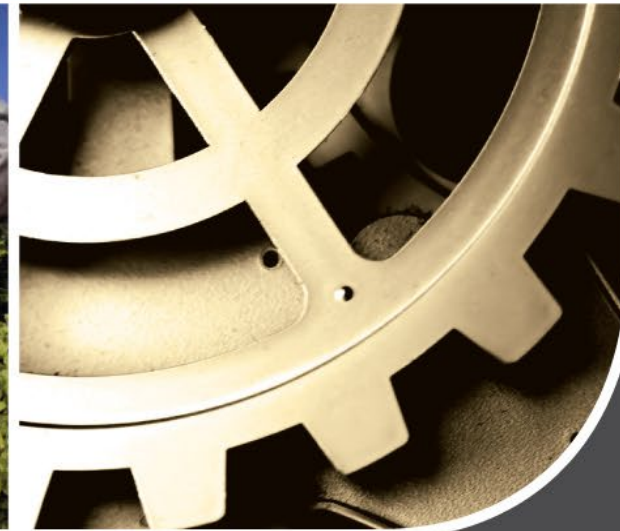
## ➤ Part 1: 10h00 – 11h00

- Draft Code of Good Practice for the Prevention and Elimination of Violence and Harassment in the World of Work published for Public Comment

## ➤ Part 2: (11h00 – 12h00)

- 2019 EE Status for Western Cape (20<sup>th</sup> CEE Annual Report)
- 2020 EE Reporting

# Draft Code of good practice on the prevention and elimination of violence and harassment in the world of work



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# Draft Code presentation outline

➤ Draft Code covers the following key elements, but not limited to:

- ✓ **Definitions**
- ✓ **Scope** and application
- ✓ **Legal framework** on violence and harassment
- ✓ **Objectives** of Draft Code
- ✓ **Guiding principles**
- ✓ **Categories** of violence and harassment
- ✓ **Main forms** of violence and harassment
- ✓ **Tests for the main forms** of violence and harassment
- ✓ **Elimination** and management strategies
- ✓ **Prevention** and awareness
- ✓ **Treatment, Care and support**
- ✓ **Privacy** and consent
- ✓ **Procedures** to manage violence and harassment
- ✓ **Monitoring** and evaluation

# Key definitions

- Some key definitions in the Code, but not limited to:
  - ✓ Bullying;
  - ✓ Discrimination;
  - ✓ Intimidation;
  - ✓ Mobbing;
  - ✓ Online violence;
  - ✓ Psychological violence and harassment
  - ✓ worker

# Scope and application of Draft Code

- Owners and Employers
- Managers and Supervisors
- Workers, including suspended and terminated
- Persons in training, including interns, apprentices and learnerships
- Volunteers, Job seekers and job applicants
- Clients
- Suppliers
- Contractors; and
- others having dealings with the organisation.

# Legal framework

- **South African labour laws on violence and harassment in the workplace:**
  - **Constitution** – Bill of rights (Section 9: Equality clause read with Section 23: Fair Labour practices)
  - **EEA - Chapter II** (Sections 5; 6(1); 6(3); 10; & 60)
    - ✓ Code of Good Practice on the **Handling of Sexual Harassment Cases** in Workplaces (2005) focused on sexual harassment and workplaces only.
    - ✓ Code of Good Practice on the **Integration of EE into HR Policies and Practices** – **“Harassment”** (2005)
  - **LRA** – violence is a form of **Misconduct**
  - **OHSA** – violence and harassment is a **health and safety occupational hazard**.

# Objectives of the Draft Code on violence & harassment

- **Objectives of draft Code are to:**
  - ✓ **Align SA existing labour laws with the ILO Convention 190**, and its Recommendation;
  - ✓ Provide a framework on the **interpretation and implementation** of EEA pertaining to violence and harassment, including gender-based violence in world of work; and
  - ✓ Provide **guidelines to employers, employees, employers organisations and unions** on how to deal with violence and harassment in the world of work.



# Guiding principles

- Workplaces should be free of V & H. Employers have a duty to remove all forms of unfair discrimination in terms of s 5 of the EEA.
- All Employers, employees, employer organisations and trade unions are required to proactively refrain from committing acts of V & H, including Gender based V & H.
- All employers, employees, employer organisations and trade unions have a role to play in contributing towards creating and maintaining a working environment in which V & H, including gender-based V & H is regarded as unacceptable.

# Categories of violence and harassment

- **Violence and Harassment generally falls into the following three broad categories:**
  - a) **Self-directed Violence** (violence against oneself).
  - b) **Interpersonal Violence** (violence against another person); and
  - c) **Collective Violence** (group or community violence).
- **Violence and harassment may include, but not limited to:**
  - ✓ **Physical assault** as well as a range of verbal or non-verbal threats;
  - ✓ **Discrimination** based on race, gender, sex, sexual orientation, etc.;
  - ✓ **Gender-based violence** – both women and men;
  - ✓ Violence and harassment that takes place **outside traditional workplaces**, e.g. social events, conferences, training, workshops, etc.
  - ✓ **Working with clients** or public exposure; and
  - ✓ **Domestic violence and harassment.**

# Main Forms of Violence and Harassment

- **Main forms of violence and harassment covered in the Draft Code, includes:**
  - ✓ **Sexual** violence and harassment
  - ✓ **Racial, ethnic or social origin** violence and harassment
  - ✓ **Workplace** bullying
  - ✓ Violence, and harassment related to **protected disclosure**
- **Under each main form** – Code covers: **different types** of each incident and how it may manifest; the **nature**, **impact** and **test to be applied** in each type of incident of violence and harassment.

# Test on Sexual V & H

- Subjective feelings of complainant should be evaluated against objective standard of a *'reasonable person/complainant'*
- Sexual attention becomes sexual violence and harassment when:
  - ✓ Behaviour is **persistent**; and/or
  - ✓ Recipient made it clear **behaviour** is considered **offensive**; and/ or
  - ✓ Perpetrator **knows or ought to have known** the behaviour is regarded as unacceptable.

# Test on Racial, Ethnic or Social Origin

- Racial harassment to be assessed objectively with reference to reaction of normal or reasonable person.
- Establish racial violence and harassment based on race, ethnic or social origin – it has to be established on a balance of probabilities that the conduct complaint of:
  - ✓ was unwanted conduct, which was persistent or serious;

# Test on Racial, Ethnic or Social Origin Cont...

- It has to be established on a balance of probabilities that the conduct complained of:
  - ✓ **Demeaned, impaired dignity, humiliated,** or created a hostile or intimidating environment or
  - ✓ Was calculated to induce submission by actual or threatened adverse consequences and
  - ✓ Was related to race, ethnic or social origin, or a characteristics with such group.
  - ✓ Whether a perpetrator would have spoken the words or behaved in the manner complained of towards the complainant, .... etc.

# Test for workplace bullying

- **The test to be applied for Workplace bullying includes:**
  - (a) **To establish workplace bullying** the test for workplace bullying is that of “*stringent intolerability*” about what is considered serious intentional infliction of a hostile work environment, on consideration of probability that the employer, its agent or both, intentionally subjected the complainant to a hostile work environment.
  - (b) A **hostile environment**, not to be endured, is one that is deemed to be hostile by both the complainant and by a reasonable person in the complainant’s situation.

# Elimination and Management of Violence & Harassment

- Employers are under legal obligation to take **proactive and remedial steps** to prevent and eliminate all forms of Violence and Harassment in the World of Work.
  - ✓ Employers are required to have **clear rules, policies and procedures** prohibiting all forms of Violence and Harassment and other forms of unfair discrimination in the world of work.
  - ✓ **Policies and procedures** adopted by an employer should provide a clear understanding of the employer's position regarding the prevention and elimination of the various forms of Violence and Harassment in the world of work.
  - ✓ Employers should ensure the **policy and procedures are communicated effectively to all workers.**



# Prevention and Awareness

- **Employers must adopt prevention and awareness programmes that include the following:**
  - ✓ **Awareness and training initiatives** to educate workers at all levels about Harassment and Violence in the WoW.
  - ✓ **communication campaigns** must clarify the understanding of the different forms of Violence and Harassment using appropriate methods and relevant expertise in accessible formats.
  - ✓ **occupational health and safety measures** to adopted and implemented, including harm-reduction strategies
  - ✓ **effective measures to reduce or mitigate the risk** of Violence and Harassment from occurring in the world of work.

# Treatment, Care and Support

- **Treatment, care, and support programmes must be clear on the interventions required and the procedures to be followed to address the different forms of Violence and Harassment.**
  - ✓ **Records of available security, police, health and safety** and other support services must be kept
  - ✓ **appropriate referrals, for counselling** and any other appropriate interventions are made.
  - ✓ programmes on **treatment, care and support are clearly communicated.**
  - ✓ programmes of **care and support including measures to reasonably accommodate** those who are negatively impacted be made available.

# Privacy and Consent

- Respecting the **sensitivity of information on record** and being recorded.
- Keeping of records in a **safe and secure place**.
- **Acquiring consent**, preferably in **writing**, for the sharing of private information.
- Developing, communicating, and implementing a **clear policy on privacy and confidentiality**.
  - ✓ **Monitoring, evaluation and review** of policy governing privacy and confidentiality.

# Procedures in managing V & H

- **Employers must develop clear procedures (included in violence and harassment policy) to deal with incidents of violence and harassment**
  - ✓ **Reporting channels** and mechanisms
  - ✓ **Obligations of the employer** in dealing with the complaint;
  - ✓ **Advise to the complainant** on how to deal with the incident;
  - ✓ **Informal and formal** procedures;
  - ✓ **Disciplinary sanctions/ remedies** to be imposed for incidents of violence and harassment.

# Monitoring and Evaluation

- **Monitoring and evaluating systems should provide the required information and need not be complicated and should consider the following:**
  - ✓ design and implementation plan for monitoring and evaluation of strategies, policies, and programmes to eliminate Violence and Harassment in their environment involving the world of work
  - ✓ Identification of key elements needed for a monitoring and evaluation system.
  - ✓ selection and use of indicators that are specific, measurable, attainable, relevant, and time-bound; and
  - ✓ gather and analyse both qualitative and quantitative information; and ensure effective communication thereof with stakeholders.

# Way forward

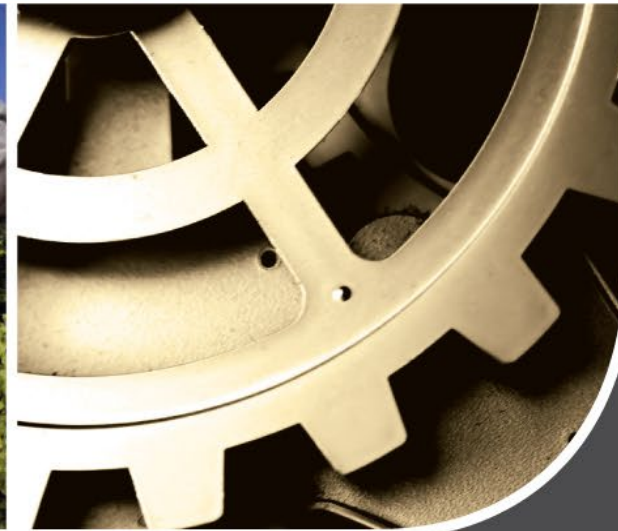
- Draft Code submitted to NEDLAC on 2 September 2020 for tabling in relevant Chamber for discussion.
- Written Public comments on Draft Code to be send to:

[jullian.mohale@labour.gov.za](mailto:jullian.mohale@labour.gov.za)

[Innocent.Makwarela@labour.gov.za](mailto:Innocent.Makwarela@labour.gov.za)

- Deadline/ closing date: **21 October 2020**

# 2019 EE STATUS (20<sup>TH</sup> CEE ANNUAL REPORT) Western Cape



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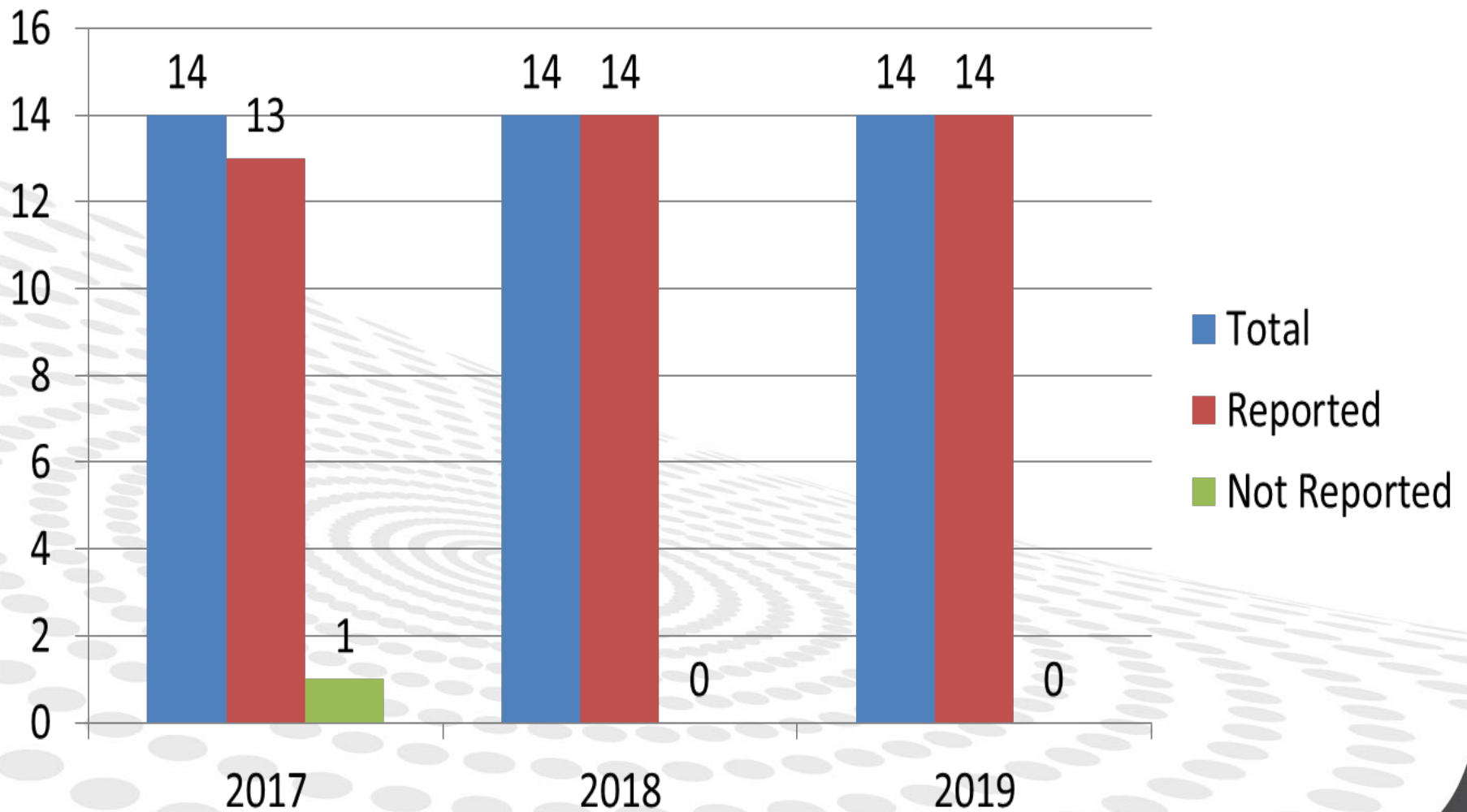


# 2019 EE status- Western Cape

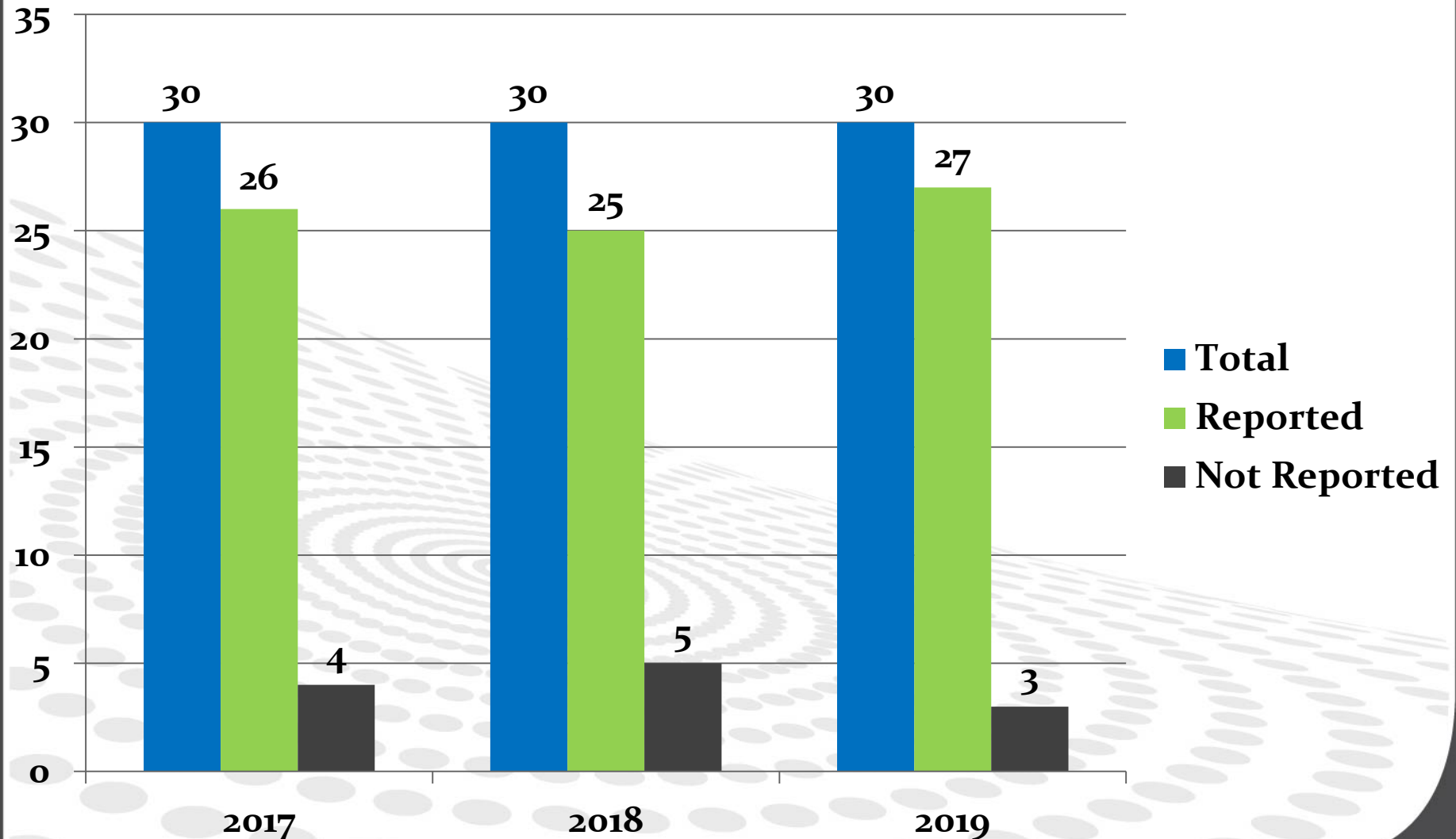
- Total of **27 127 EE reports (from both Private and Public sectors)** covering **7 332 072 employees** were successfully submitted and analysed for 2019.
- ✓ Total of **5 660 (20.9%) EE reports** were successfully submitted by the designated employers in the **Western Cape** for 2019 EE Reporting period.
- ✓ Total of **1 266 357 (17.3%) employees** were covered in the 2019 EE Reports received and analysed from **Western Cape**



# 2019 EE status in Western Cape (Provincial Departments)



# 2019 EE status in Western Cape (Municipalities)

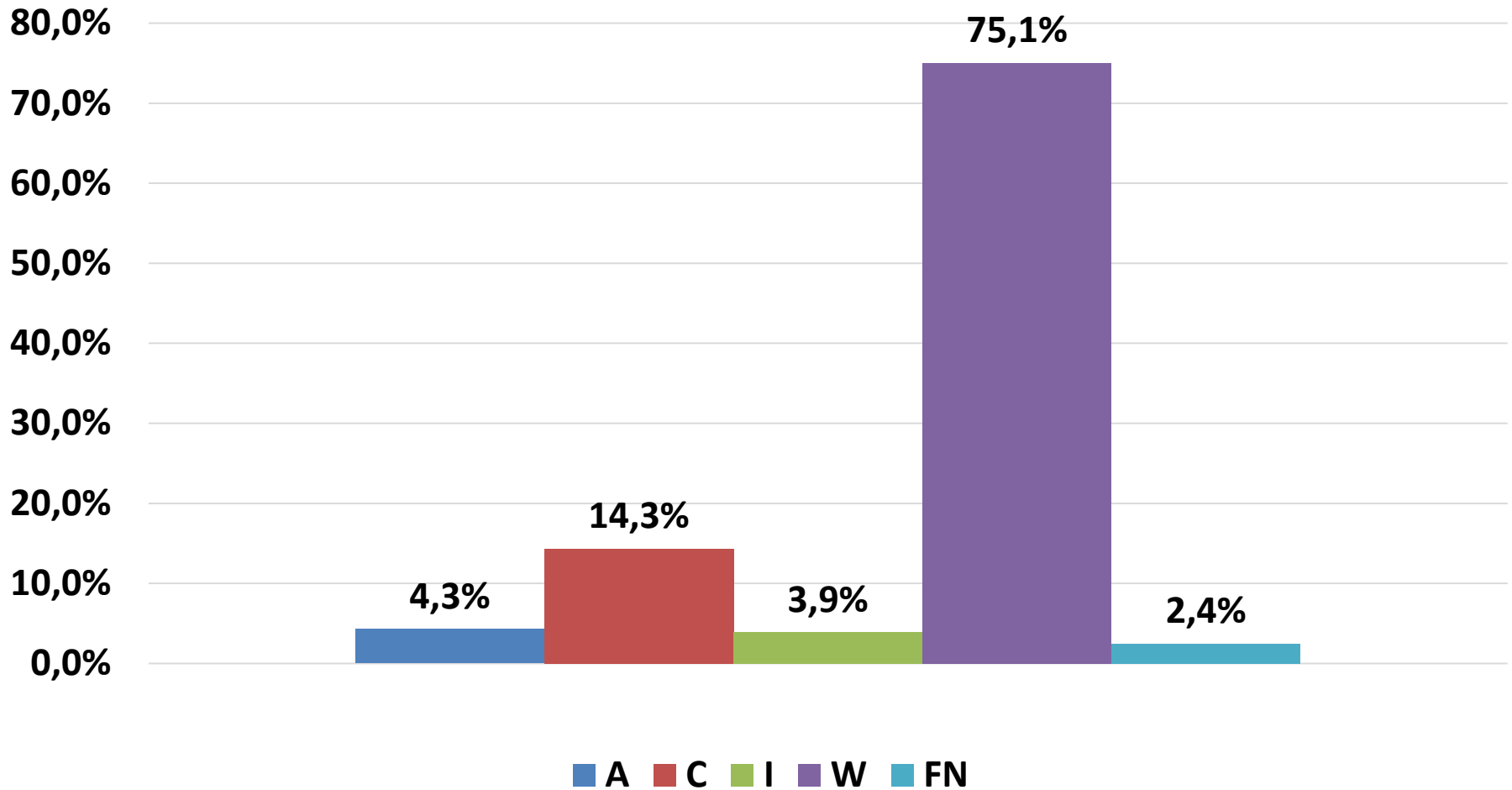


# Western Cape EAP

MALE			FEMALE			TOTAL
AM	African Male	20.1%	AF	African Female	18.2%	38.3%
CM	Coloured Male	25.1%	CF	Coloured Female	20.8%	45.9%
IM	Indian Male	0.5%	IF	Indian Female	0.2%	0.7%
WM	White Male	8.3%	WM	White Female	6.9%	15.2%
		54.0%			46.1%	100%

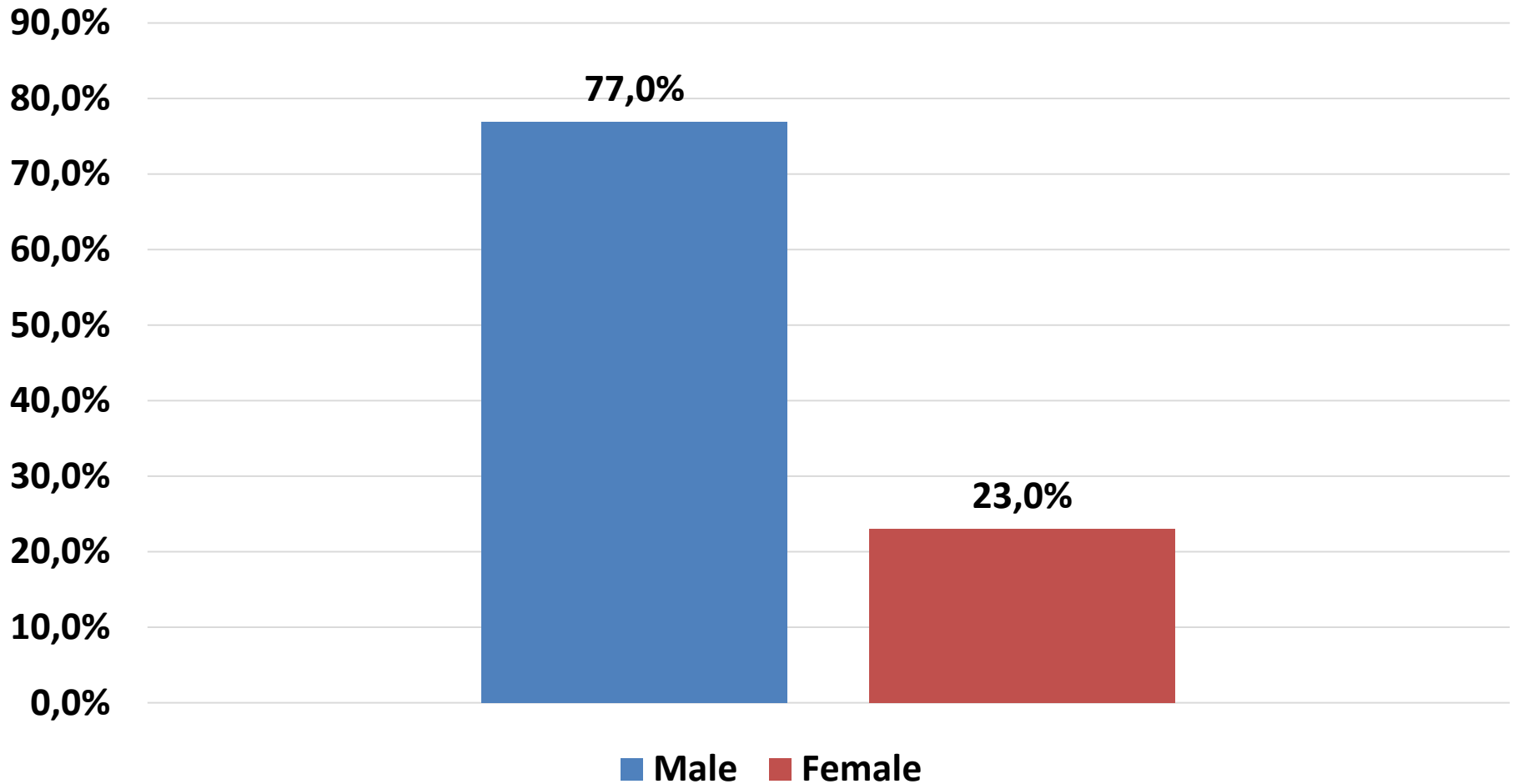
# Top management by population group

Top Managment - Population group



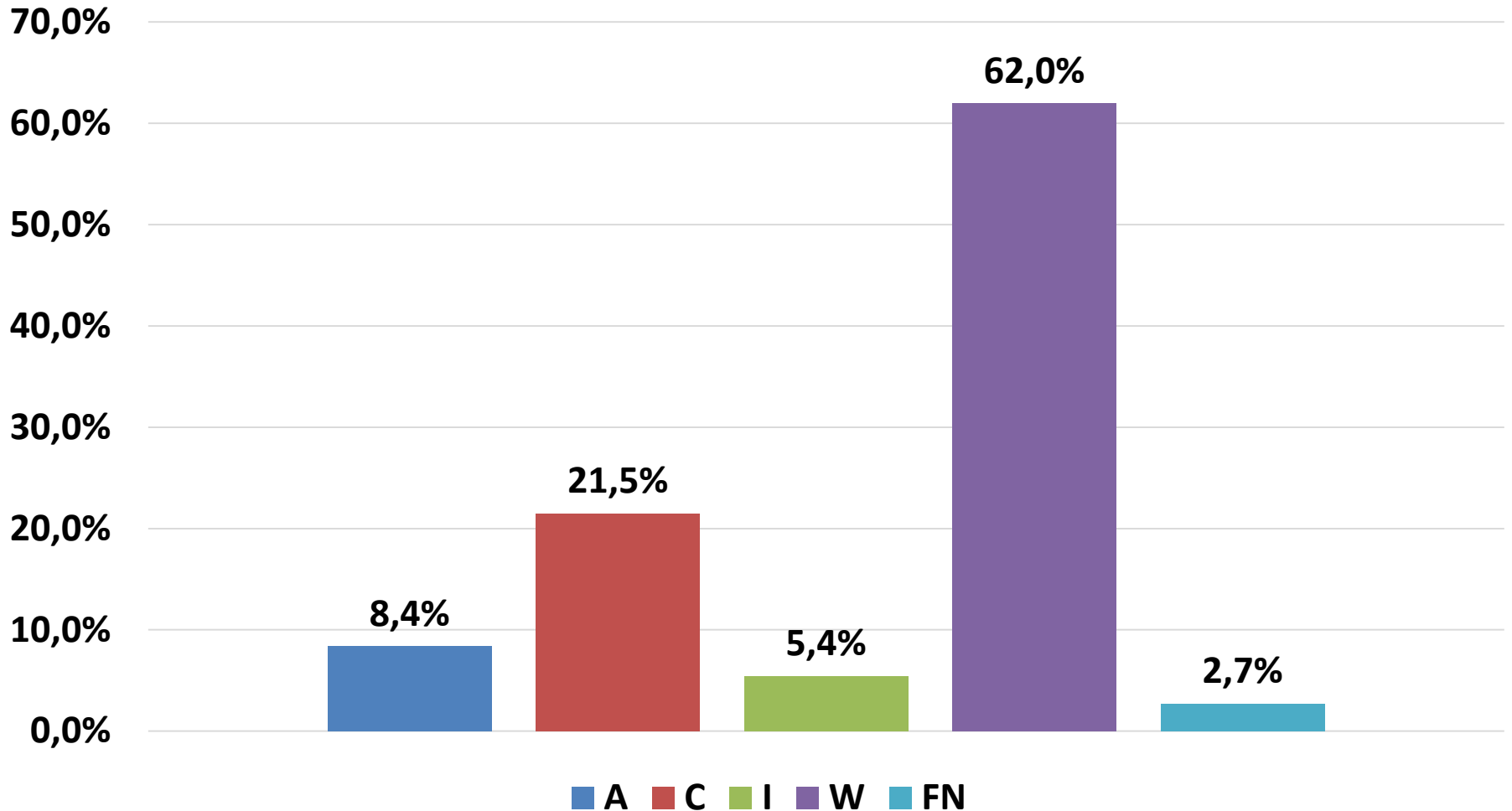
# Top management by gender

Top Management - Gender



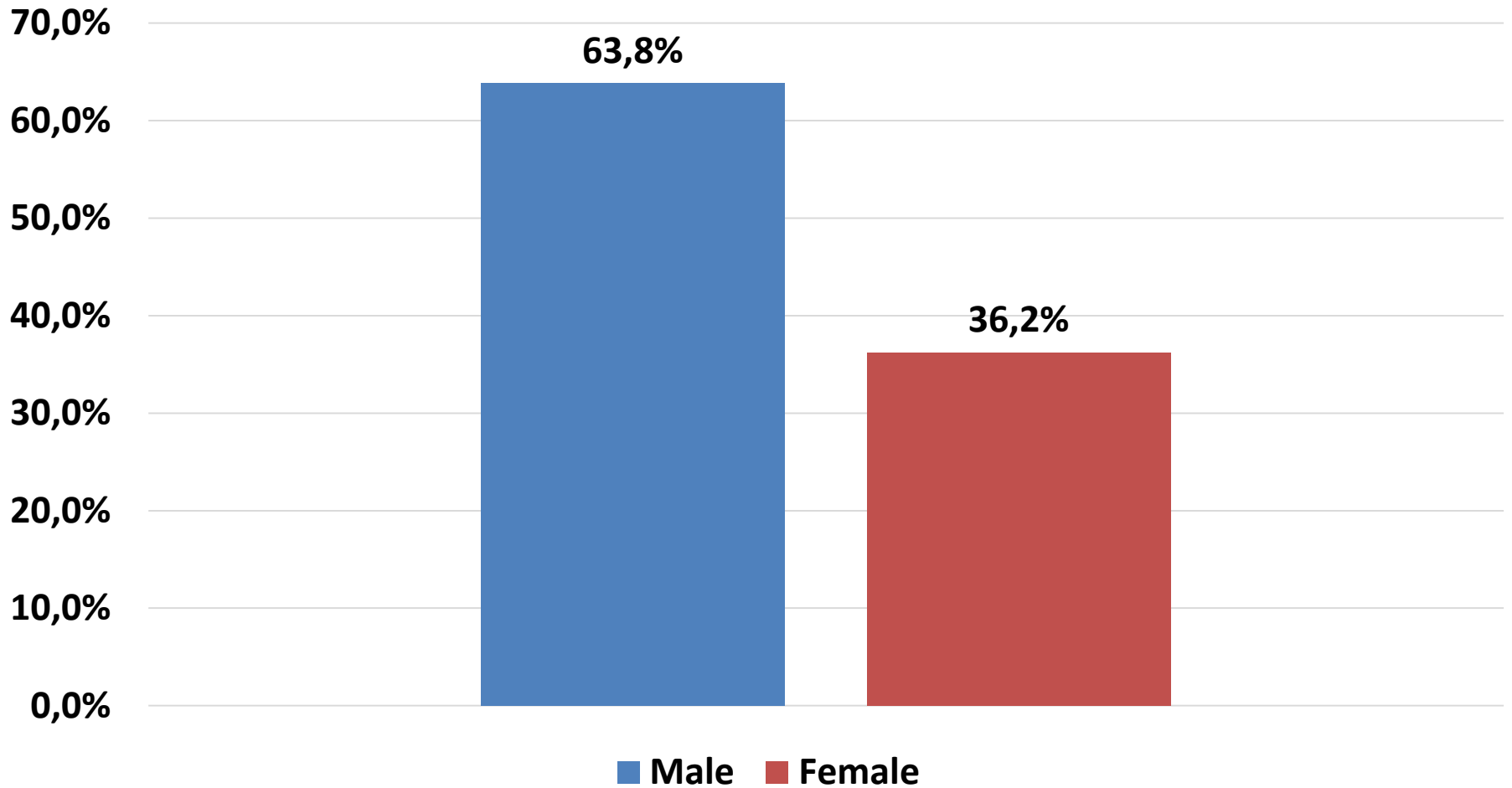
# Senior management by population group

Senior Management - Population group



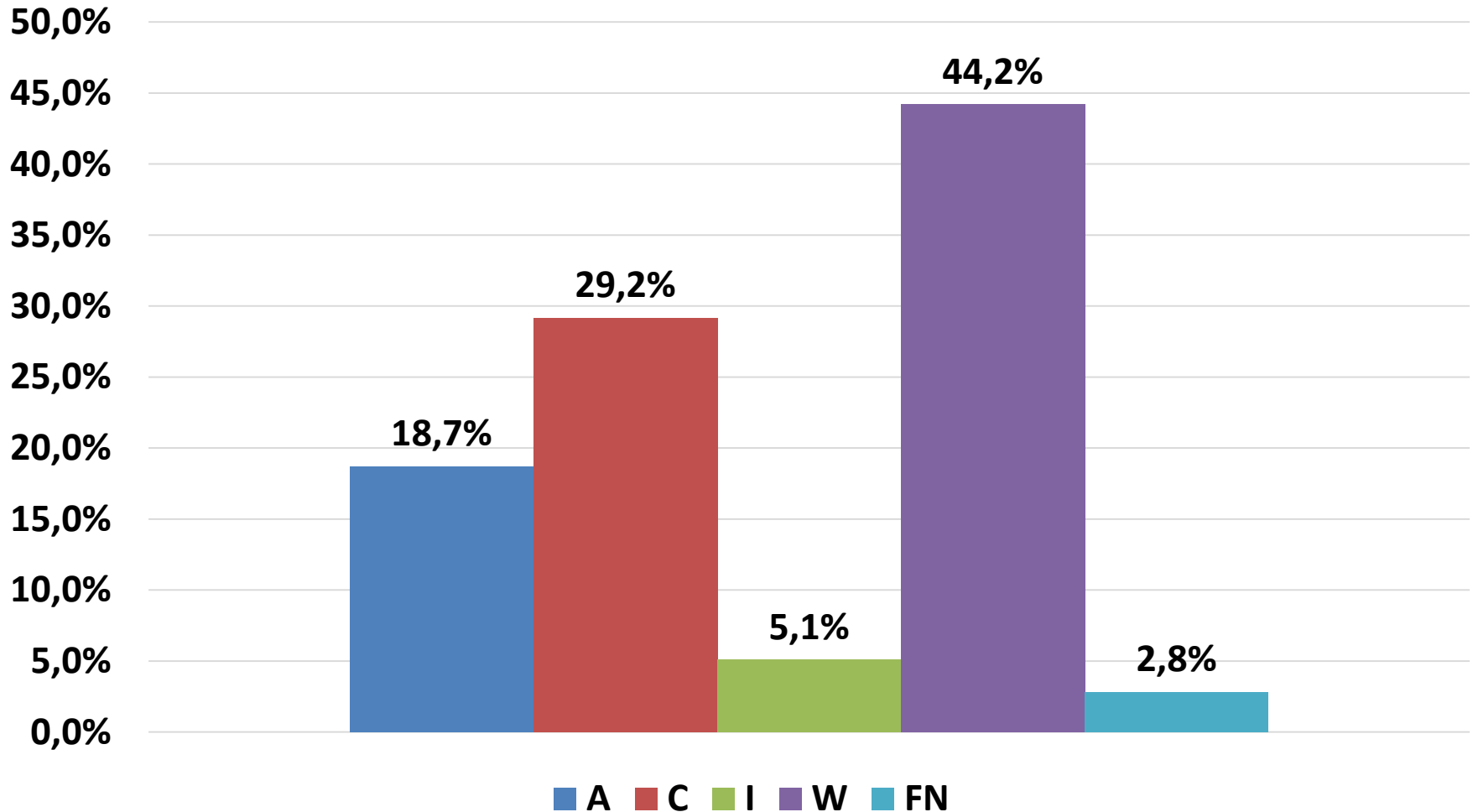
# Senior management by gender

Senior Management - Gender



# Professionally qualified by population group

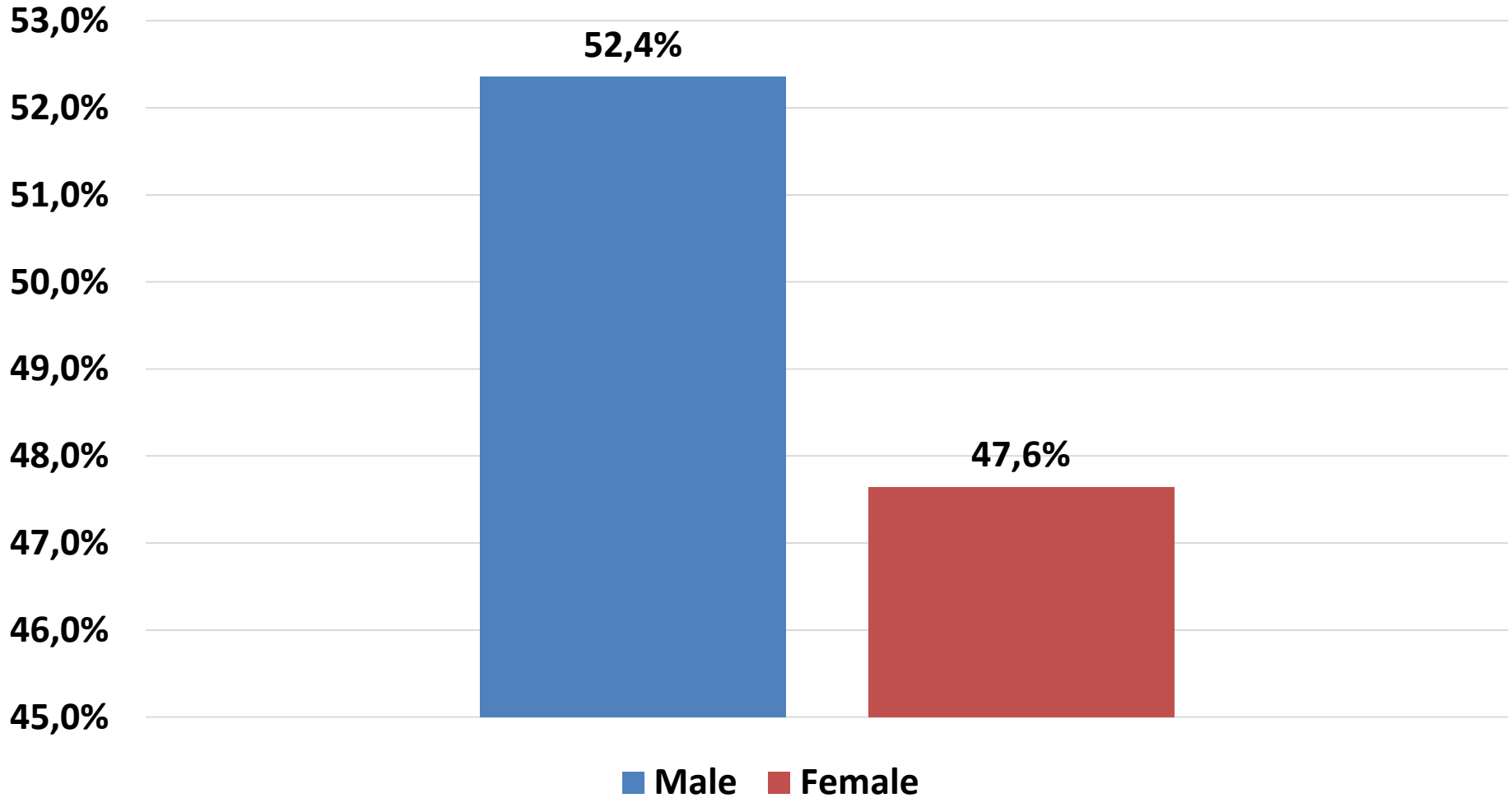
Professionally Qualified - Population group





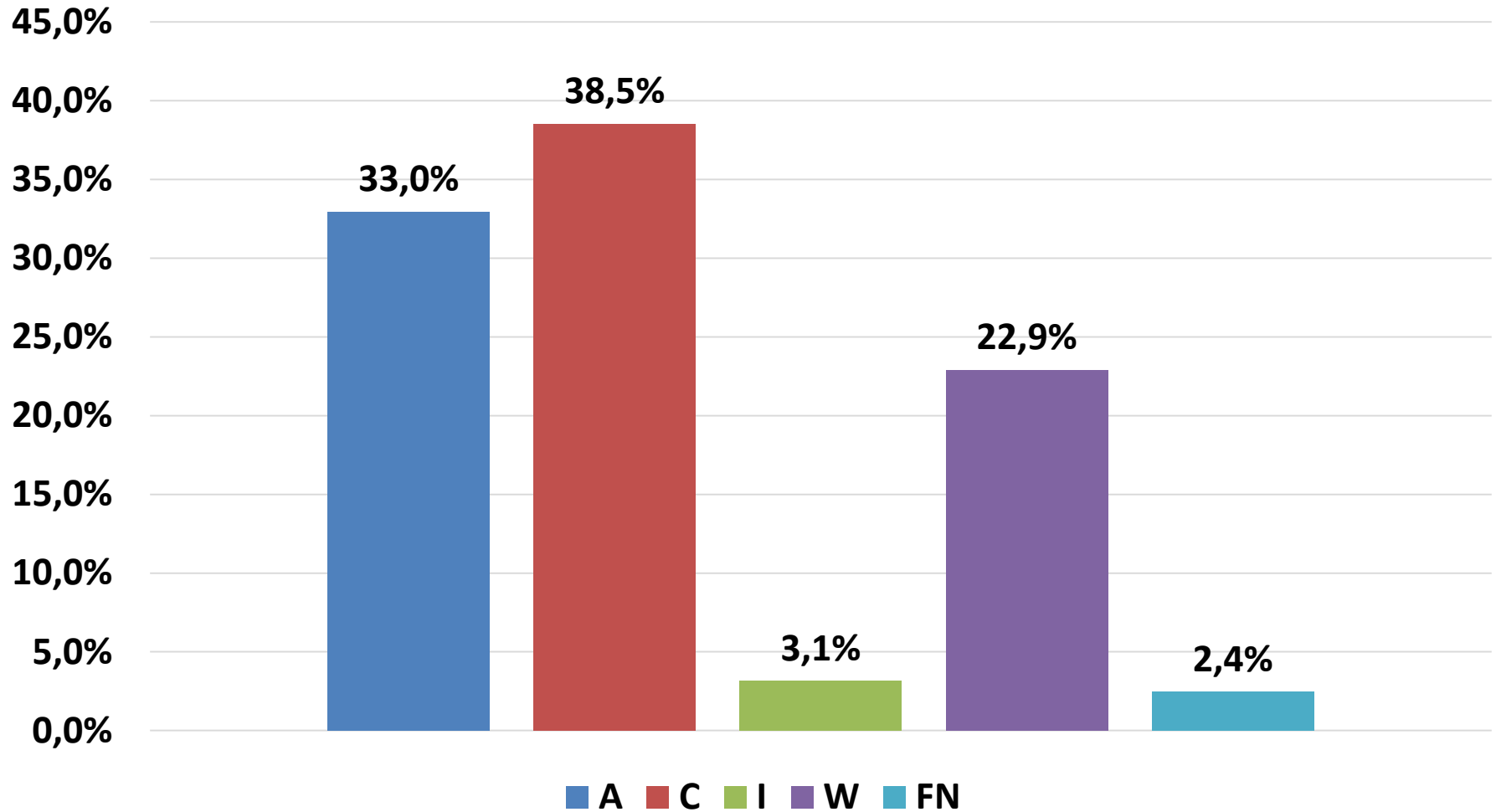
# Professionally qualified by gender

Professionally Qualified - Gender



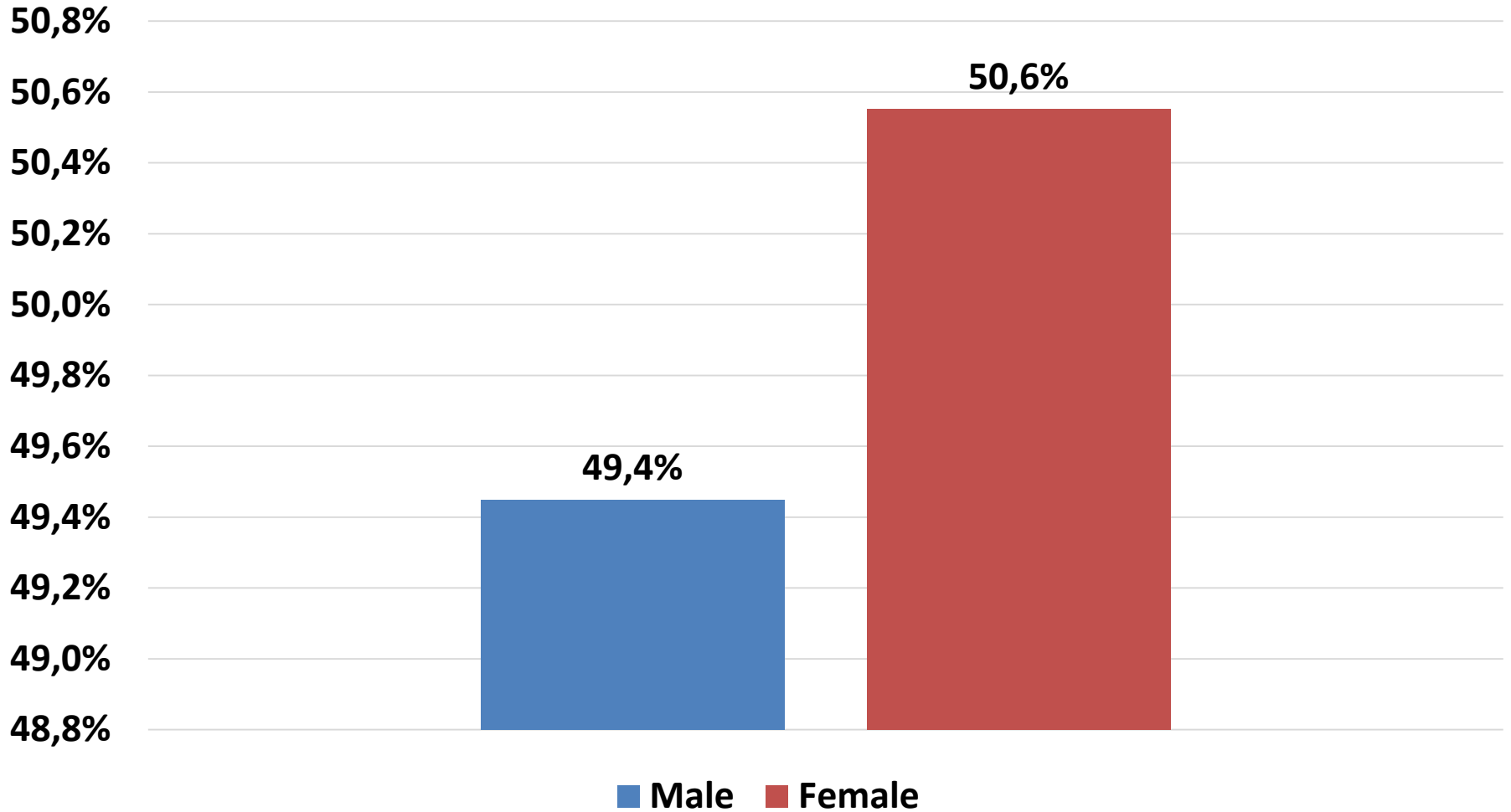
# Skilled Technical by population group

Skilled - Population group



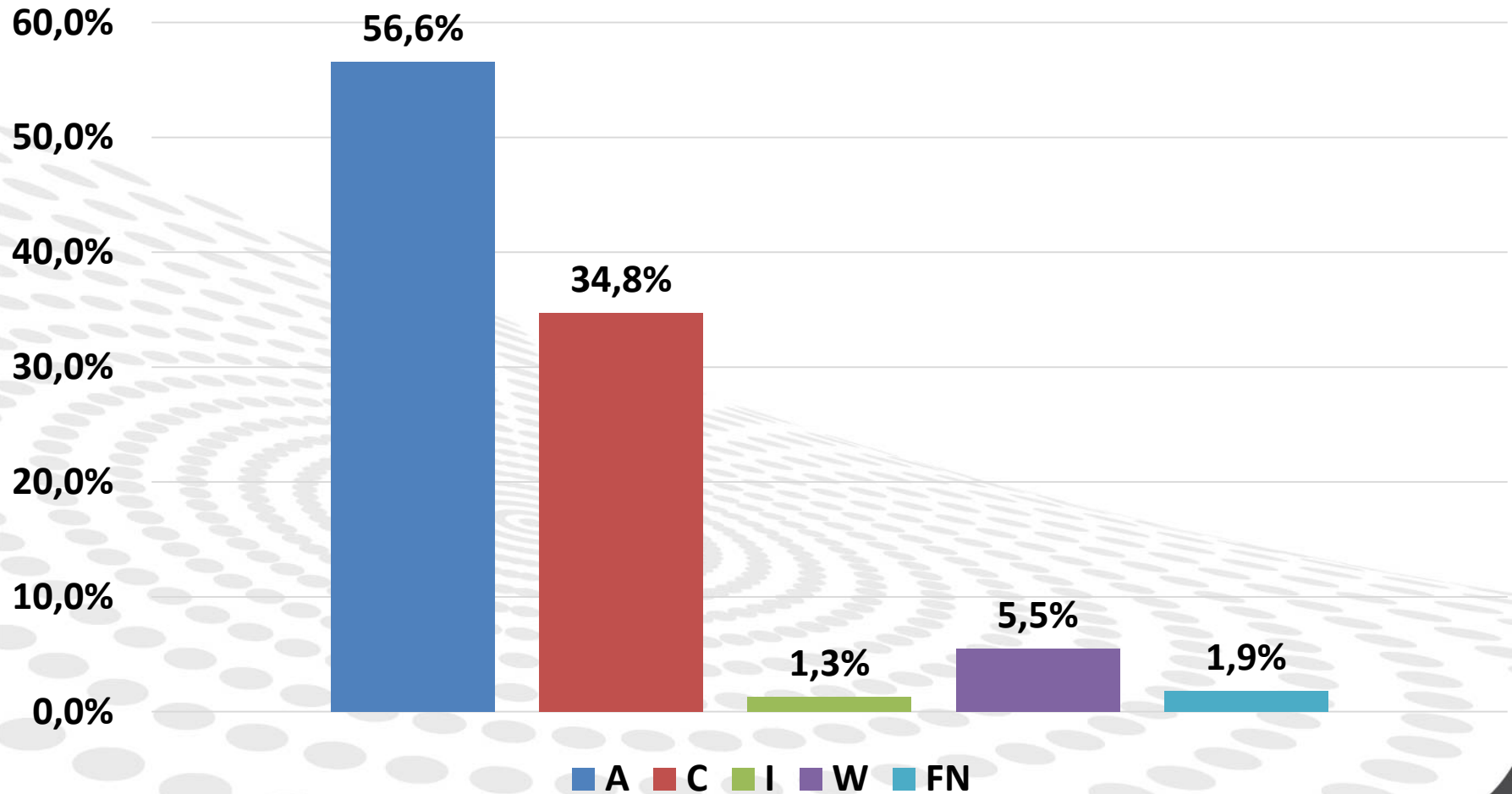
# Skilled Technical by gender

Skilled - Gender



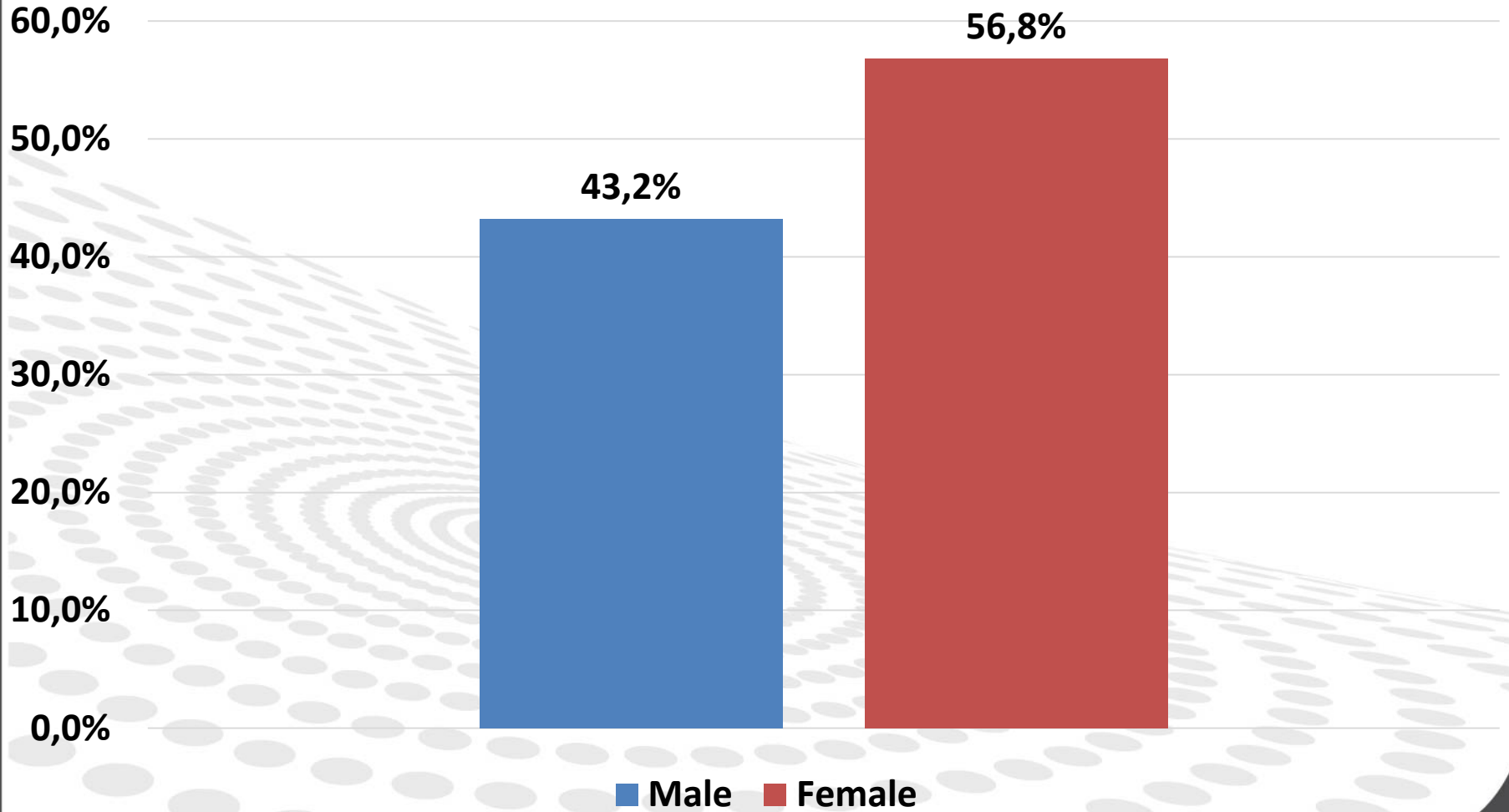
# Semi- skilled by population group

Semi-skilled - Population group



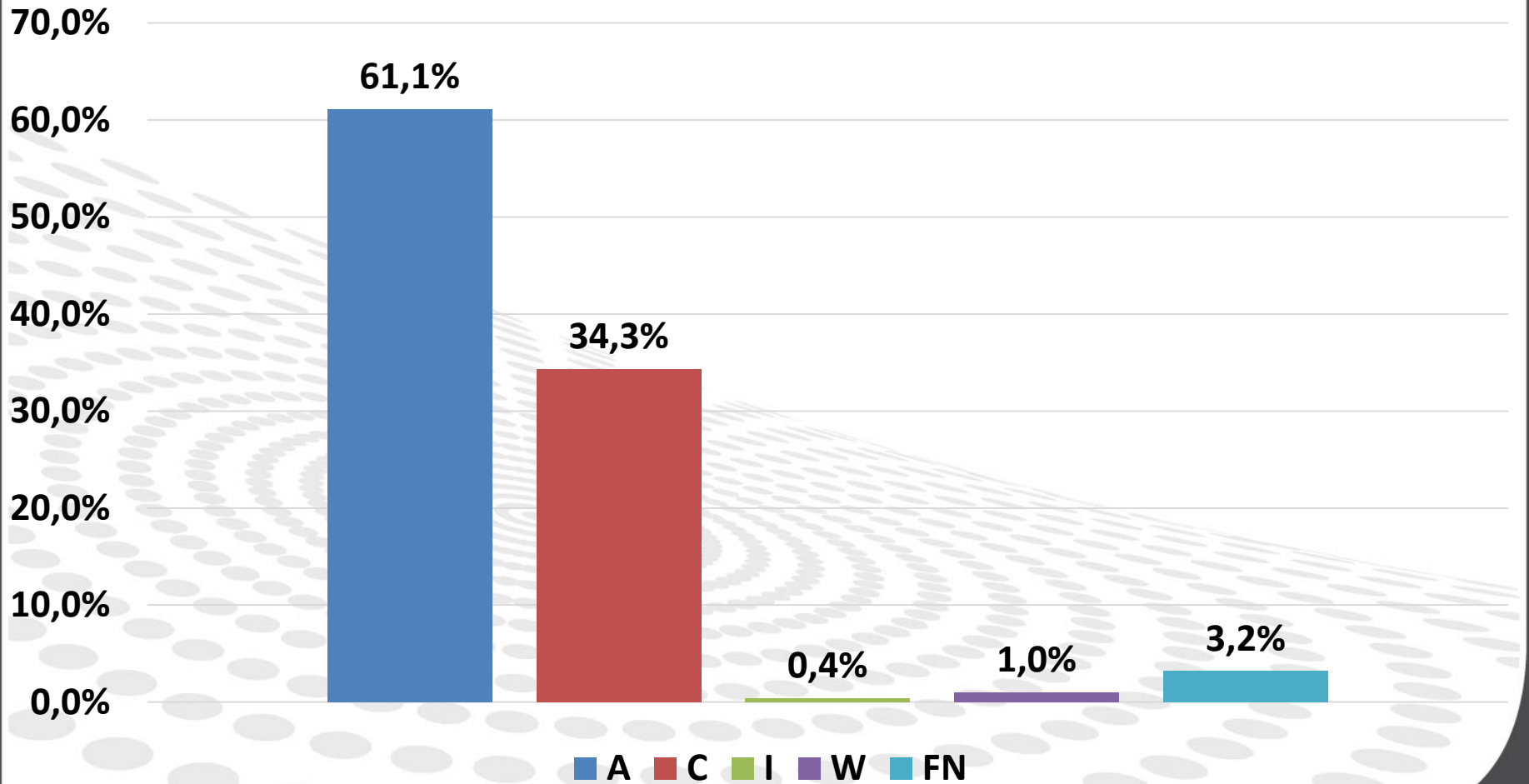
# Semi-skilled - Gender

Semi-skilled - Gender



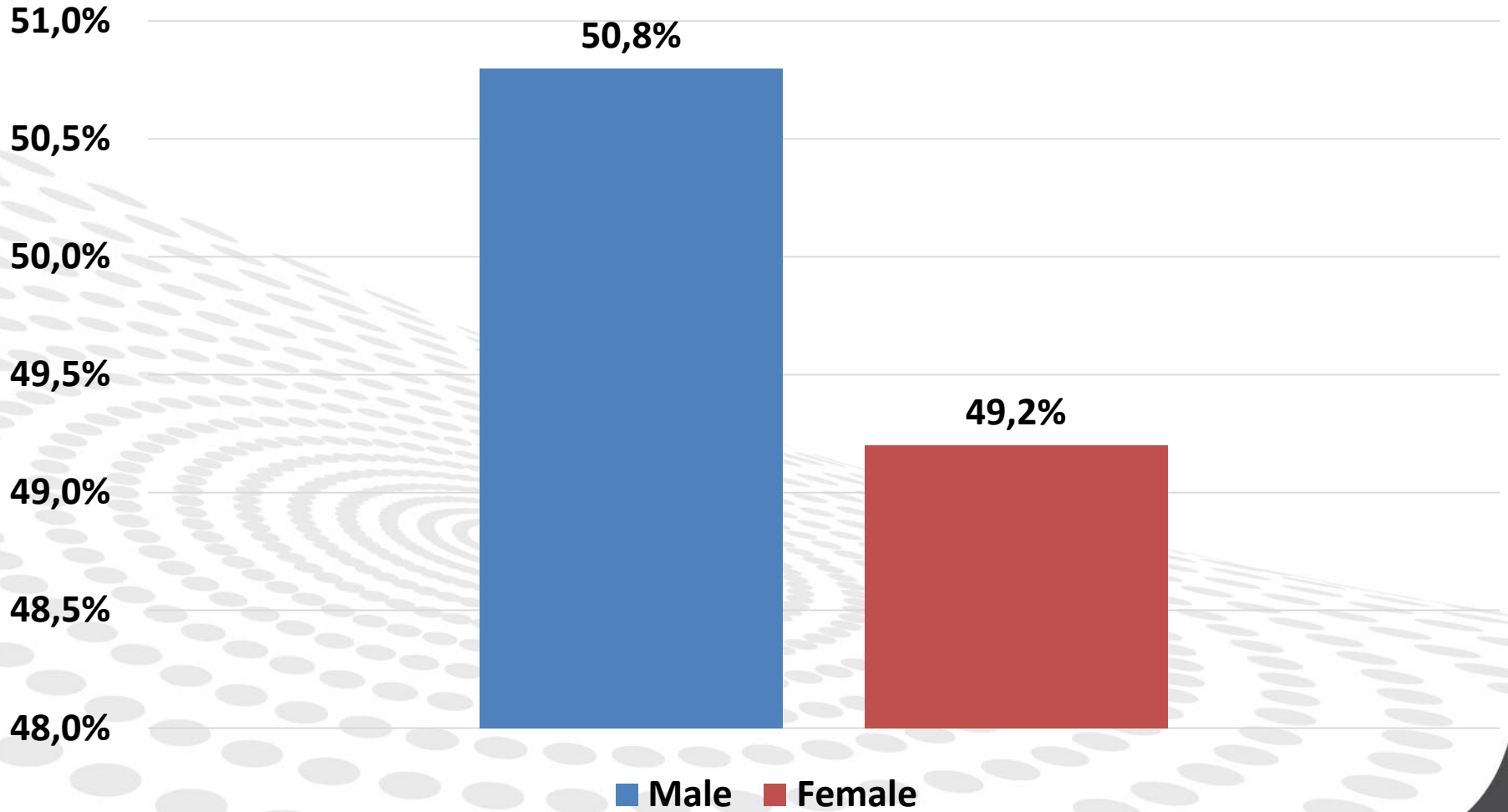
# Unskilled by population group

Unskilled - Population group



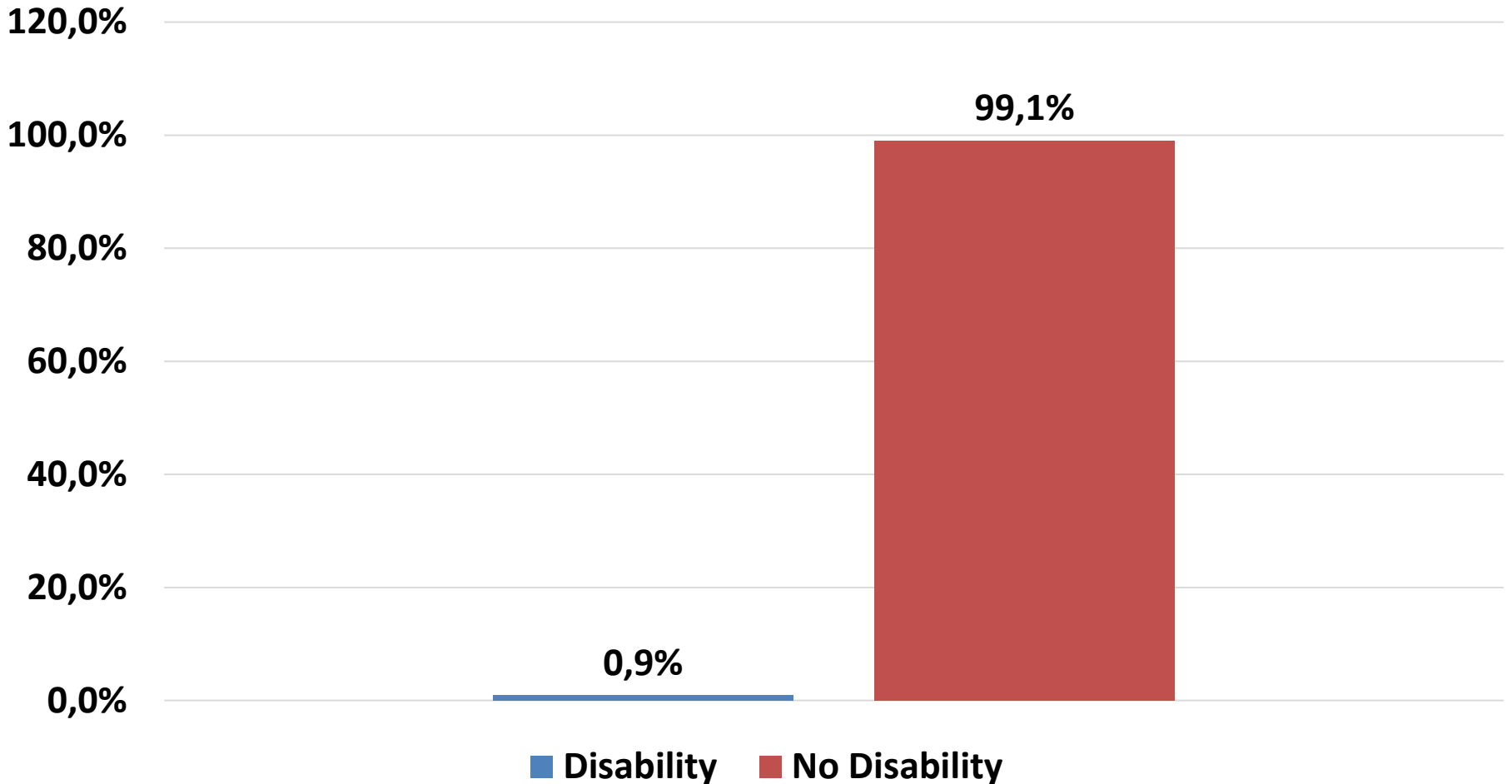
# Unskilled - Gender

Unskilled - Gender



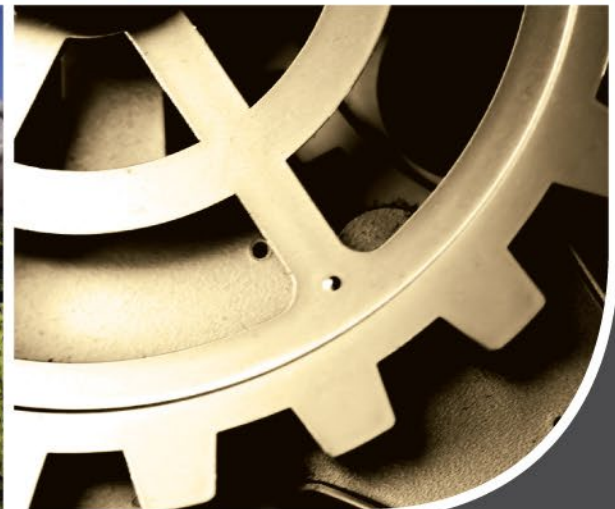
# Disability

## Total Workforce - Disability





# 2020 EMPLOYMENT EQUITY REPORTING



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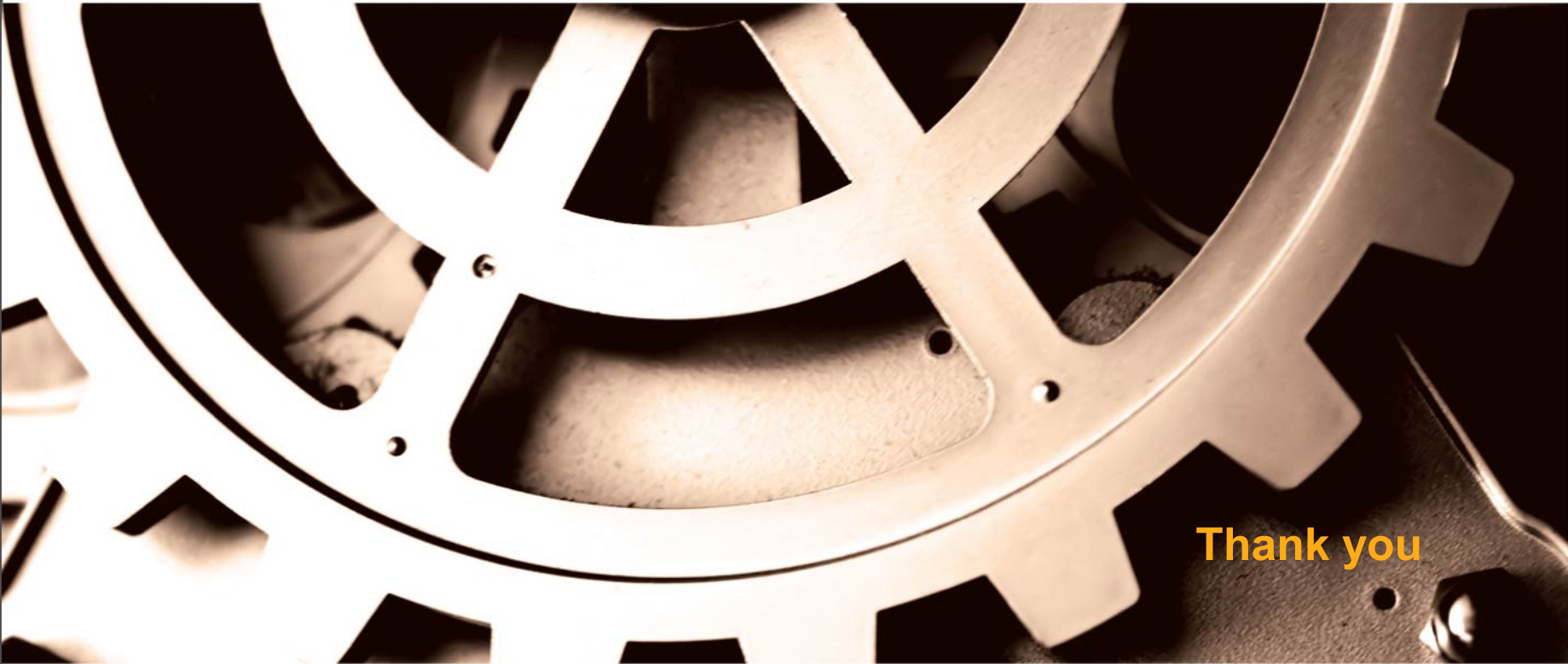


## 2020 DG notifications & EE Reporting deadlines

- ✓ **EEA14 form for DG notification, together with supporting documents, must reach the DG before the last working day of August 2020.**
- ✓ **Reporting opens on 1 September 2020 (EEA2 & EEA4 Forms) – both for Manual and EE Online reporting.**
- ✓ **Manual submissions closes on 1 October 2020 and EE online reporting closes on 15 January 2021 (midnight).**

# 2020 EE System Reporting

- ✓ **Select relevant Industry Sector; Industry Sub-sector; and bargaining council on Section A (employer details).**
- ✓ **EEA4 Section E: If an employer indicated that they do not have policy to address the vertical gap, the second question for remuneration-gap between the highest and lowest paid worker in your organisation aligned to your policy will be greyed out.**
- ✓ **Employers are only required to select one key reason for differentiation in the remuneration gap that applies to their organization.**



**Thank you**